

REMARKS

Claims 1 - 20 are pending in this case and stand rejected under 35 U.S.C. §103(a) over U.S. Patent No. 6,625,156 to Shaio in view of U.S. Patent No. 6,785,237 to Sufleta. No amendment was made to claims 1 -20, which are enclosed herein solely for the Examiner's convenient reference. By this Response, applicant respectfully traverses the above rejection and requests reconsideration of the subject application in view of the following remarks.

In paragraphs 3 of the Office Action, claims 1 - 20 have been rejected under §103 over Shaio in view of Sufleta. This rejection is respectfully traversed.

Independent claims 1 and 6 each require, at least, extracting both first and second feature information respectively from inflow and outflow blocks of data respectively at ingress and egress. The extracted first feature information is sent from the ingress to the egress. The extracted first and second feature information are compared with each other to determine if they match. When a match occurs, QoS is measured based on the matching pair of first and second feature information.

Applicant respectfully disagrees with the Office Action that Shaio discloses "extracting first feature information from the inflow block of data at the ingress, wherein the first feature information identifies the inflow block of data" as required in independent claims 1 and 6. In column 9, lines 47-53, Shaio discloses to extract control messages from the encapsulation at egress MPS 158 (see, column 9, line 43). The extraction in Shaio is carried out at egress MPS 158, rather than the ingress as required in the claimed invention. Therefore, the extraction of the control messages in Shaio differs from the extraction of the first feature information in the claimed invention. Accordingly, the cited portions of Shaio do not disclose "extracting first feature information from the inflow block of data at the ingress" as is required in independent claims 1 and 6.

Independent claims 1 and 6 also require sending the extracted "first feature information [from the ingress] to the egress." The Office Action cites "[e]lements of Fig. 14; col. 8, lines 8-17; col 11, lines 35-67" of Shaio and alleges that such cited portions

read on the above claim feature. Applicant respectfully disagrees. The above cited portions in Shaio is irrelevant to sending extracted “first feature information [from the ingress] to the egress” The Office Action misinterpreted Shaio to have taught the above claim features. In column 8, lines 8-17 of Shaio, the cited portions discuss a client/server architecture, in which the MPC 146 detects flows of packets forwarded to MPS 142. In column 11, lines 35- 67, Shaio teaches to set up a short-cut path between the ingress MPC 152 and the egress MPC 154. Nowhere in the above cited portions does Shaio teach either extracting a first feature information or sending the first feature information for the ingress to the egress, *i.e.*, MPS 158 discussed above, as is required in independent claims 1 and 6.

Independent claims 1 and 6 further require determining whether the first feature information extracted at the ingress matches the second feature information extracted at the egress. The Office Action cites “steps 222, 240, tag 238, Fig. 13; Fig. 12; col 11, lines 35-67; col 12, lines 1-9” of Shaio and alleged that such cited portions read on the above claim feature. Applicant respectfully disagrees. The Office Action admitted that “Shaio does not explicitly disclose d) extracting second feature information from the an outflow block of data at the egress, wherein the second feature information identifies the outflow block of data” (see page 3 of the Office Action). It is therefore contradictory to hold Shaio discloses matching the first and second feature information when the Office Action admits that Shio does not disclose extracting second feature information. Applicant submits that Shaio cannot compare its extracted “control messages” with a non-existing extracted second feature information. Therefore, the cited portion in Shaio does not teach “determining whether the first feature information extracted at the ingress matches the second feature information extracted at the egress” as required in independent claims 1 and 6.

Independent claims 1 and 6 further require to measure QoS based on a matching pair of the first and second feature information when matching occurs. Similar to the above remarks, applicant submits that it is contradictory to hold Shaio to have disclosed measuring QoS based on a matching pair of the first and second feature information but failed to teach extracting second feature information. Therefore, the cited

portions in Shaio do not disclose measuring QoS based on a matching pair of feature information, as required in independent claims 1 and 6.

The Office Action acknowledged that “Shaio does not explicitly disclose d) extracting second feature information from the an outflow block of data at the egress, wherein the second feature information identifies the outflow block of data” and cited Sufleta to remedy the above deficiency of Shaio. Applicant respectfully disagrees. In Sufleta, a QoS signature is transferred from a probe to a central correlation device, instead of the egress as claimed. The central correlation device in Sufleta is separate and not part of the egress from the network. Accordingly, even if Shaio and Sufleta are combined as suggested in the Office Action, the combination still does not disclose to send the first feature information from the ingress to the egress, as is required in independent claims 1 and 6. Accordingly, the present invention as required in independent claims 1 and 6 patentably distinguishes over Shaio and Sufleta.

Similarly, each of independent claims 11 and 17 - 19 patentably distinguishes over Shaio and Sufleta. Independent claim 11 requires at least “sending the first feature data to the egress.” Independent claim 17 requires at least “sending the first feature data to the exit measuring probe.” Independent claims 18 and 19 each require at least “sending the first feature data to the egress measuring probe.” Neither Shaio nor Sufleta discloses the above features as remarked above. Accordingly, even if Shaio and Sufleta are combined as suggested in the Office Action, such combination does not disclose the claimed invention.

In paragraph 20 of the Office Action, applicant is requested “to fully consider the references in entirety as potentially teaching all or part of the claimed invention.” Applicant respectfully disagrees with such proposition stated in the Office Action. As set forth in § 2142 of the Manual Of Patent Examining Procedure:

The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

In this case, because the Office Action failed to establish a *prima facie* case of obviousness, applicant is not obliged to review additional prior art disclosures to prove nonobviousness.

In view of the foregoing, the subject rejection of claims 1 - 20 is believed to be overcome.

Applicant has shown that all pending claims are patentable over the cited art and hereby respectfully requests that the rejections of the pending claims be withdrawn. Each of the claims 1 - 20 in this application is believed to be in immediate condition for allowance and such action is earnestly solicited.

No fee is believed to be due for this Amendment. Should any fees be required, please charge such fees to Deposit Account No. 50-2215.

Respectfully submitted,

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